IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION (P.I.L.) NO.2705 OF 2004

Pratap J. Shah ..Petitioner.
Versus
State of Maharashtra & Ors. ..Respondents.

Mr.Pratap J. Shah, Petitioner present in person.
Mr.P. H. Kantharia, APP for the Respondents.
Mr. R.S. Tripathi for the Intervenor.

CORAM: DALVEER BHANDARI, C.J. &
S.J. VAZIFDAR, J.
DATE : 10TH AUGUST, 2005

P.C.

This petition is filed as a Public Interest Litigation. The petition is throughly misconceived and, as we shall demonstrate it, in any event, is not a genuine Public Interest Litigation.

2. Respondent No.2 is the Commissioner of Police. Respondent No.3 is the Senior Inspector, M.I.D.C. Mumbai. Respondent No.4 is the Senior Inspector, General Crime Branch, Economic Offences Wing, Mumbai. Respondent No.5 is the Deputy Director of Enforcement. Respondent No.6 is the Central Bureau of Investigation.

3. The Petitioner has sought a transfer of certain First

Information Reports and criminal cases and criminal suits filed against certain persons to the CBI. These persons though named in the petition, have not been joined as Respondents. The Petitioner has also prayed that certain investigation being carried out by the Senior Inspector, Crime Branch, Mumbai, against these persons be transferred to the CBI; that certain allegations pertaining to the said persons be ordered for investigation by the CBI; that a suit filed by one of these persons against the other be investigated by the CBI on the ground that the suit appears to be fraudulent; that certain overseas transactions being investigated by the Directorate of Enforcement, against these persons be transferred to the CBI; that the CBI be directed to file a report of the investigation being carried out and that the said persons be committed for committing contempt for submitting certain allegedly fraudulent documents in proceedings pending in this Court.

4. The Petitioner is neither a party to, nor concerned in any manner or even affected by any of the said complaints, proceedings and transactions. He submitted that he has filed the petition as a concerned citizen and nothing more – a stand that is now clearly

belied. This is only one of the reasons for dismissing the petition.

5. Firstly, this is not a bona-fide Public Interest Litigation filed by a mere concerned citizen. The Petitioner has sought the above orders against nine persons/companies (terming them as accused probably due to the pending proceedings against them) viz.

(i) M/s. Lanyard Foods Ltd.,

(ii) Shri Haresh Dwarkadas Gandhi,

(iii) Smt. Sudha Haresh Gandhi,

(iv) Shri Nakul Sudhir Mullick

(v) Shri Shailesh S. Desai,

(vi) Shri Haladya S. Shetty

(vii) Shri Prashant Devendra Diwan,

(viii) Shri Himanshu alias Hemanshu Suresh Gandhi,

(ix) Shweta International Pte. Ltd.

He has not made them parties to the petition. One of them viz. Shailesh S. Desai however has intervened in the matter and has filed an affidavit 16th March, 2005 with the leave of the Court.

6. It is pertinent to note that the Petitioner was involved in litigation with the alleged accused which he has suppressed.

(a). The Petitioners' firm filed a suit being Suit No.6828 of 1996 in the Bombay City Civil Court, in respect of a godown owned by him. The said Lanyard Foods Ltd. i.e. one of the alleged accused was also joined later as a party to that suit.

(b). The Petitioner sought an injunction to restrain the Defendants therein from carrying out any construction in the said godown and for an injunction to remove certain storage tanks therein. A Notice of Motion taken out by him for interim reliefs, was dismissed by an order dated 7/9th May, 1997.

(c). The Petitioner filed an Appeal from Order being A.O. No.822 of 1997 against the said order. The A.O. was dismissed by a learned Single Judge of this Court by an order dated 31.7.1997.

(d). The Petitioner thereafter filed a Contempt Petition being Criminal Contempt Petition No.12 of 1998 for violation of the order of the learned Single Judge, which recorded a statement on behalf of the Defendants therein. The said Contempt Petition was not pressed as recorded by an order of the Division Bench of this Court dated 17.11.1998.

(e). The Petitioner took out another Notice of Motion in the said

suit for an order directing the Defendants herein to deposit a sum of Rs.4,53,350/- and to pay warehousing charges in respect of the said godown. The Notice of Motion was dismissed by an order dated 11.7.2001.

(f). The Petitioner thereafter filed another Contempt Petition being Contempt Petition No.246 of 2001.

7. It is clear therefore that the Petitioner has a grievance against and several disputes with the said accused. The grievances may well be justified. The Petitioners' remedy however is to adopt proceedings in accordance with law for the redressal of such grievances and not to file a Public Interest Litigation of this nature. Further, the Petitioner was duty bound to have disclosed the aforesaid facts, which he failed to do. The failure was not unintentional. It was deliberate. We hasten to add that we say nothing about the merits concerning the disputes between the Petitioner and the alleged accused. Those questions must be decided in appropriate proceedings.

8. The Petitioner has in detail set out the disputes, complaints and other legal proceedings between the alleged accused and various

third parties including certain banks. For instance, the Petitioner has referred to an FIR No.170 of 2000 registered at the instance of a company Careb Brett Sea Scam Pvt. Ltd. The Petitioner analyzes this FIR to make allegations against the accused. He also analysed the Anticipatory Bail Applications made by the accused to show contradictions therein. He refers, in paragraph 23 of the Writ Petition as to what happened during the hearing of the said applications. It is difficult to understand on what basis he has stated as to what allegedly transpired in Court. He was not a party to the proceedings. Then again, the Petitioner has referred to a suit filed by the State Bank of Saurashtra. He comes to his own conclusion as to the merits of the defence of the accused in that suit. The Petitioner is not concerned with that suit in any manner whatsoever. Nor is he concerned with the transactions between the bank and the accused. He further refers to complaints filed by State Bank of Saurashtra, the Punjab National Bank, one Vijay Nanalal Shah and China Shipping Development Company Limited with the Economic Offences Wing. He then states that to the best of his information one of the accused had indulged in various illegalities, that the accused has not retired

the documents under the letter of credit as a result whereof the banks have suffered losses. Curiously, the Petitioner refers to the complaint filed by one Vijay N. Shah an allegedly aggrieved unpaid supplier. He adds that to the best of his information, one of the accused adopted deceptive tactics to misguide the Crime Branch. He then gives details of how these various third parties have been affected by the accused.

9. The Petitioner himself however is not concerned with any of these transactions or the aforesaid complaints and proceedings in any manner whatsoever.

10. These are questions which must be decided in the respective proceedings. There is no reason or justification to transfer them to the CBI for investigation.

11. We are satisfied and as we will shortly illustrate, the concerned authorities are investigating the matters and prosecuting the alleged accused where necessary, in accordance with law. Indeed, the Petitioner submitted that it was not his case that the concerned authorities were not discharging their functions properly. He however stated that it was necessary that all these complaints and cases be transferred to the CBI for investigation for the reasons

stated in paragraph 13B of the Writ Petition. In paragraph 13B he has stated that to the best of his information the alleged accused have been presenting different stories to delay the investigations and, therefore, it was necessary that the same be brought under one roof of the CBI for through investigation.

We see no reason or justification for the same especially as the concerned authorities, are seized of the matters and are prosecuting the cases duly and diligently. This was not even denied by the Petitioners before us. It appears that having failed in his attempts thus far to obtain any reliefs in respect of the disputes between himself and the alleged accused, the Petitioner has filed the present Petition. The same ought never to have been done.

12. The concerned authorities have filed detailed affidavits before us indicating that they have, in fact, taken action against the alleged accused in respect of the very allegations made in the Petition. For instance, the Inspector of Policed has filed an affidavit indicating the steps taken by him as the Investigating Officer in C.R. No.170 of 2000 which the Petitioner wants transferred to the CBI. The chargesheet has already been filed. The matter is pending for

trial, statements have been recorded and the case has been registered under various provisions of the Indian Penal Code, details in respect thereof have also been stated in the affidavit, with which were not presently concerned. Suffice it to state that action is being taken in respect of the said complaint.

13. Another affidavit has been filed by another Inspector of Police, Economic Offences Wing, setting out some of the details in respect of M. E. C. R. No.14 of 2001 under various provisions of the Indian Penal Code, in respect whereof he is the Investigating Officer. The investigation is at an advanced stage. He has even given the details of how the complainant in that complaint is under investigation.

14. The Assistant Director, in the Office of the Directorate of Enforcement, has also filed an affidavit indicating the steps taken in respect of one of the accused regarding siphoning of funds. The Special Director, Directorate of Enforcement, has apparently adjudicated six of the notices and found certain contraventions. He has stated that further investigations are in progress and the investigation in respect of Foreign Exchange Management Act, 1999 will be carried out, if found necessary. Similarly, an affidavit has been

filed by the Inspector of Police, CBI, Security & Fraud Cell, who has given details of the action taken on the FIRs.

15. It is curious that some of the allegations, termed as serious by the Petitioner, pertain to the grievances of third parties, including some foreign parties. None of the said parties have been impleaded in this Petition. None of them have come forward to support the petition. The Petitioner is not concerned with the grievances, claims and litigations adopted by such parties.

16. In the circumstances, the Petition is dismissed. The Petitioner shall pay to each of the Respondents, costs, fixed at Rs.2,500/- within twelve weeks from today. We refrain from passing a heavier order of costs in view of the fact that the Petitioner has appeared in person before us. We clarify that the order of costs does not reflect on the merits of the disputes between the Petitioner and the accused.

CHIEF JUSTICE

S.J. VAZIFDAR, J.